

105th Congress, 1st Session - - - - - House Document 105-49

SECOND SUPPLEMENTARY AGREEMENT AMENDING
THE AGREEMENT BETWEEN THE GOVERNMENT OF
THE UNITED STATES OF AMERICA AND THE GOV-
ERNMENT OF CANADA WITH RESPECT TO SOCIAL
SECURITY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE SECOND SUPPLEMENTARY AGREEMENT AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA WITH RESPECT TO SOCIAL SECURITY (THE SECOND SUPPLEMENTARY AGREEMENT), SIGNED AT OTTAWA ON MAY 28, 1996, WHICH IS INTENDED TO MODIFY CERTAIN PROVISIONS OF THE ORIGINAL UNITED STATES-CANADA SOCIAL SECURITY AGREEMENT SIGNED AT OTTAWA MARCH 11, 1981, WHICH WAS AMENDED ONCE BEFORE BY THE SUPPLEMENTARY AGREEMENT OF MAY 10, 1983, PURSUANT TO 42 U.S.C. 433(e)(1)



MARCH 3, 1997.—Message and accompanying papers referred to the
Committee on Ways and Means and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

38-462

WASHINGTON : 1997

To the Congress of the United States:

Pursuant to section 233(e)(1) of the Social Security Act (the "Act"), as amended by the Social Security Amendments of 1977 (Public Law 95-216, 42 U.S.C. 433(e)(1)), I transmit herewith the Second Supplementary Agreement Amending the Agreement Between the Government of the United States of America and the Government of Canada with Respect to Social Security (the Second Supplementary Agreement). The Second Supplementary Agreement, signed at Ottawa on May 28, 1996, is intended to modify certain provisions of the original United States-Canada Social Security Agreement signed at Ottawa March 11, 1981, which was amended once before by the Supplementary Agreement of May 10, 1983.

The United States-Canada Social Security Agreement is similar in objective to the social security agreements with Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Such bilateral agreements provide for limited coordination between the U.S. and foreign social security systems to eliminate dual social security coverage and taxation, and to help prevent the loss of benefit protection that can occur when workers divide their careers between two countries.

The Second Supplementary Agreement provides Canada with a specific basis to enter into a mutual assistance arrangement with the United States. This enables each Governments' Social Security agency to assist the other in enhancing the administration of their respective foreign benefits programs. The Social Security Administration has benefited from a similar mutual assistance arrangement with the United Kingdom. The Second Supplementary Agreement will also make a number of minor revisions in the Agreement to take into account other changes in U.S. and Canadian law that have occurred in recent years.

The United States-Canada Social Security Agreement, as amended, would continue to contain all provisions mandated by section 233 and other provisions that I deem appropriate to carry out the provisions of section 233, pursuant to section 233(c)(4) of the Act.

I also transmit for the information of the Congress a report prepared by the Social Security Administration explaining the key points of the Second Supplementary Agreement, along with a paragraph-by-paragraph explanation of the effect of the amendments on the Agreement. Annexed to this report is the report required by section 233(e)(1) of the Act on the effect of the Agreement, as amended, on income and expenditures of the U.S. Social Security program and the number of individuals affected by the amended Agreement. The Department of State and the Social Security Administration have recommended the Second Supplementary Agreement and related documents to me.

I commend the United States-Canada Second Supplementary Social Security Agreement and related documents.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 3, 1997*.

**SECOND SUPPLEMENTARY AGREEMENT
AMENDING THE AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED STATES
OF AMERICA AND
THE GOVERNMENT OF CANADA
WITH RESPECT TO SOCIAL SECURITY**

The Government of the United States of America

and

the Government of Canada,

Noting the Agreement between them with respect to Social Security, signed at Ottawa on March 11, 1981, and the Supplementary Agreement amending that Agreement, signed at Ottawa on May 10, 1983, and

Having determined the need to adjust certain provisions of the Agreement,

Have decided to conclude a second Supplementary Agreement and, to this end,

Have agreed as follows:

Article 1

For the purposes of this Supplementary Agreement:

- (a) "the Agreement" means the Agreement between the Government of the United States of America and the Government of Canada with respect to Social Security, signed at Ottawa on March 11, 1981, as amended by the Supplementary Agreement Amending the Agreement between the Government of the United States of America and the Government of Canada with respect to Social Security, signed at Ottawa on May 10, 1983;
- (b) any other term has the meaning assigned to it in the Agreement.

Article 2

Article I of the Agreement is amended as follows:

- (a) In paragraph (1), the word "and" between the words "Guam" and "American Samoa" is replaced by a comma (","), and the words "and the Northern Mariana Islands" are added immediately after "American Samoa".
- (b) In paragraph (4), the words "Secretary of Health and Human Services" are deleted, and the words "Commissioner of Social Security" are substituted in their place.
- (c) In paragraph (5), the words "Department of National Health and Welfare" are deleted, and the words "Department of Employment and Immigration" are substituted in their place.

(designated by Human Resources Development)" are substituted in their place; and the hyphen ("-") and the word "Taxation" are deleted.

(d) In paragraph (9), the period (".") at the end thereof is deleted, and a semi-colon (";") is substituted in its place.

(e) The following new paragraphs (10) and (11) are inserted immediately after paragraph (9):

"(10) "Government of Canada" means the Government in its capacity as representative of Her Majesty the Queen in right of Canada;

(11) Any term not defined in this Article has the meaning assigned to it in the applicable laws."

Article 3

Article II of the Agreement is amended as follows:

(a) In paragraph (1) (a) (ii), "1954" is deleted, and "1986" is substituted in its place.

(b) Paragraph (3) is deleted, and the following new paragraphs (3) and (4) are substituted in its place:

"(3) Subject to paragraph (4), this Agreement shall also apply to laws which amend, supplement, consolidate or supersede the laws specified in paragraph (1).

- (4) This Agreement shall apply to laws which extend the laws of a Contracting State to new categories of beneficiaries unless an objection on the part of that Contracting State has been communicated to the other Contracting State not later than three months following the entry into force of such laws."

- (c) Paragraph (4) is renumbered as paragraph (5).

Article 4

Article V of the Agreement is amended as follows:

- (a) Paragraph 2(a) is revised to read as follows:

"Where a person who is normally employed in the territory of one Contracting State and who is covered under its laws in respect of work performed for an employer having a place of business in that territory is sent by that employer to work for the same employer in the territory of the other Contracting State, the person shall be subject to the laws of only the first Contracting State in respect of that work, as if it were performed in the territory of the first Contracting State. The preceding sentence shall apply provided that the period of work in the territory of the other Contracting State is not expected to exceed 60 months. For purposes of applying this sub-paragraph, an employer and an affiliated company of that employer (as defined under the laws of the Contracting State from which the person was sent) shall be considered one and the same, provided that the employment in the other Contracting State would

have been subject to the laws on compulsory coverage of the Contracting State from which the person was sent in the absence of this Agreement.”

- (b) Paragraph (9) is deleted.

Article 5

Chapter 2 of Part III of the Agreement is deleted, and the following new Chapter 2 is substituted in its place:

“CHAPTER 2

PROVISIONS APPLICABLE TO CANADA

ARTICLE VIII

- (1) (a) If a person is not entitled to the payment of a benefit because he or she has not accumulated sufficient periods of residence under the *Old Age Security Act*, or periods of coverage under the *Canada Pension Plan*, the entitlement of that person to the payment of that benefit shall, subject to sub-paragraph (1)(b), be determined by totalizing these periods and those specified in paragraph (2), provided that the periods do not overlap.

(b) In the application of sub-paragraph (1)(a) of this Article to the *Old Age Security Act*:

- (i) only periods of residence in Canada completed on or after January 1, 1952, including periods deemed as such under Article VI of this Agreement, shall be taken into account; and
- (ii) if the total duration of those periods of residence is less than one year and if, taking into account only those periods, no right to a benefit exists under that Act, the agency of Canada shall not be required to pay a benefit in respect of those periods by virtue of this Agreement.

(2) (a) For purposes of determining entitlement to the payment of a benefit under the *Old Age Security Act*, a quarter of coverage credited under United States laws on or after January 1, 1952 and after the age at which periods of residence in Canada are credited for purposes of that Act shall be considered as three months of residence in the territory of Canada.

(b) For purposes of determining entitlement to the payment of a benefit under the *Canada Pension Plan*, a calendar year including at least one quarter of coverage credited under United States laws shall be considered as a year of coverage credited under the *Canada Pension Plan*.

ARTICLE IX

- (1) If a person is entitled to the payment of an Old Age Security pension or a spouse's allowance solely through the application of the totalizing provisions of Article VIII, the agency of Canada shall calculate the amount of the pension or spouse's allowance payable to that person in conformity with the provisions of the *Old Age Security Act* governing the payment of a partial pension or a spouse's allowance, exclusively on the basis of the periods of residence in Canada on or after January 1, 1952 which may be considered under that Act or are deemed as such under Article VI of this Agreement.
- (2) Paragraph (1) shall also apply to a person outside Canada who would be entitled to the payment of a full pension in Canada but who has not resided in Canada for the minimum period required by the *Old Age Security Act* for entitlement to the payment of a pension outside Canada.
- (3) Notwithstanding any other provision of this Agreement:
 - (a) an Old Age Security pension shall be paid to a person who is outside Canada only if that person's periods of residence, totalized as provided in Article VIII, are at least equal to the minimum period of residence in Canada required by the *Old Age Security Act* for entitlement to the payment of a pension outside Canada; and
 - (b) a spouse's allowance and a guaranteed income supplement shall be paid to a person who is outside of Canada only to the extent permitted by the *Old Age Security Act*.

ARTICLE X

If a person is entitled to the payment of a benefit under the *Canada Pension Plan* solely through the application of the totalizing provisions of Article VIII, the agency of Canada shall calculate the amount of benefit payable to that person in the following manner:

- (a) the earnings-related portion of the benefit shall be determined in conformity with the provisions of the *Canada Pension Plan*, exclusively on the basis of the pensionable earnings under that Plan; and
- (b) the flat-rate portion of the benefit shall be determined by multiplying:
 - (i) the amount of the flat-rate portion of the benefit determined in conformity with the provisions of the *Canada Pension Plan*

by
 - (ii) the fraction which represents the ratio of the periods of coverage under the *Canada Pension Plan* in relation to the minimum qualifying period required under that Plan to establish entitlement to that benefit, but in no case shall that fraction exceed the value of one."

Article 6

Article XII of the Agreement is amended as follows:

- (a) The following new sub-paragraph (b) is inserted immediately after sub-paragraph (a):

“(b) To the extent permitted by the laws which they administer, and any other relevant national statutes, communicate to each other any information necessary for the application of this Agreement;”

- (b) The existing sub-paragraphs (b) and (c) are respectively redesignated as sub-paragraphs (c) and (d).

Article 7

Article XIII is amended by adding the following sentence at the end thereof:

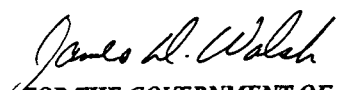
“In accordance with arrangements to be agreed upon pursuant to Article XII(a), the Competent Authorities and agencies may also assist each other in administering the laws to which this Agreement applies.”

Article 8

- (1) The Contracting States shall notify each other in writing, through the diplomatic channel, of the completion of their respective legal procedures required for the entry into force of this Supplementary Agreement. This Supplementary Agreement shall enter into force on the first day of the fourth month after the date of the last notification.
- (2) On the entry into force of this Supplementary Agreement, any reference in the Agreement to "this Agreement" shall be taken to mean the Agreement as amended by this Supplementary Agreement.
- (3) The application of this Supplementary Agreement shall not result in any reduction in the amount of a benefit to which entitlement was established prior to its entry into force.
- (4) Subject to paragraph (5), this Supplementary Agreement shall remain in force without any limitation on its duration.
- (5) In the event of the termination of the Agreement through the application of paragraph (1) of Article XXI thereof, this Supplementary Agreement shall also be terminated, with effect on the same day as the termination of the Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Supplementary Agreement.

Done in two copies at Ottawa, this 28th day of May, 1996, in the English and French languages, both texts being equally authentic.



**FOR THE GOVERNMENT OF
THE UNITED STATES
OF AMERICA**



**FOR THE GOVERNMENT
OF CANADA**

REPORT TO CONGRESS TO ACCOMPANY
THE SECOND SUPPLEMENTARY SOCIAL SECURITY AGREEMENT
BETWEEN THE UNITED STATES AND CANADA

INTRODUCTION

The supplementary Social Security agreement between the United States and Canada, signed on May 28, 1996, is intended to modify certain provisions of the original U.S.-Canadian Social Security agreement (TIAS 10863), which was signed on March 11, 1981, and which entered into force on August 1, 1984. The original agreement was amended once before by a supplementary agreement that entered into force at the same time as the original agreement. This second supplementary agreement, like the original agreement and first supplementary agreement, was negotiated under authority of section 233 of the Social Security Act.

U.S.-Canadian Social Security Agreement

The Social Security agreement between the United States and Canada is one of 17 bilateral agreements the United States has concluded with foreign countries to provide limited coordination of the U.S. old-age, survivors, and disability insurance (OASDI) program with the comparable programs of those countries. Like the other agreements, the U.S.-Canadian agreement has two main purposes. First, it eliminates dual Social Security coverage and taxation, the situation that occurs when a worker from one country works in the other country and is required to pay Social Security taxes to both countries on the same earnings. Each agreement includes rules that assign a worker's Social Security coverage and tax liability to just one country.

Second, the agreement helps prevent gaps in Social Security benefit protection for workers who divide their careers between the two countries. Under the agreement, workers may qualify for partial U.S. or Canadian benefits based on "totalized" (i.e., combined) work credits from both countries.

Supplementary Agreement

The second supplementary agreement would amend the original 1984 agreement to update and simplify several of its provisions. The amendments are necessary to take account of changes in U.S. and Canadian law that have occurred since the original agreement was signed and to conform the original agreement more closely to later Social Security agreements the United States and Canada have each concluded with other countries. The supplementary agreement will also add a provision to the original agreement authorizing the U.S. and Canadian Social Security agencies to establish a program of mutual administrative assistance as explained more fully below.

Accompanying this report is a paragraph-by-paragraph explanation of the supplementary agreement (Annex A) and the estimate required by section 233(e)(1) of the Social Security Act on the effect of the supplementary agreement on income and expenditures of the U.S. Social Security program (Annex B). Also included is a composite version of the U.S.-Canadian Social Security agreement marked to show the changes that will be made as a result of the supplementary agreement (Annex C).

MAIN PROVISIONS

Mutual Assistance Arrangement

The U.S. Social Security Administration (SSA) and the Canadian Social Security agencies believe they can improve the administration of their respective Social Security programs by entering into arrangements for mutual administrative assistance. SSA currently has such an arrangement with the United Kingdom. Under mutual assistance arrangements, SSA and the foreign Social Security agency assist each other in projects such as verifying continuing eligibility factors for each country's beneficiaries residing in the other country. Before entering into a mutual assistance arrangement, however, the Canadian authorities requested that Article XIII of the original U.S.-Canadian Social Security agreement be revised to provide their agencies with a more explicit authorization to provide administrative assistance to SSA on a reciprocal basis.

Canadian Benefit Provisions

The supplementary agreement also brings the wording of the Canadian benefit provisions of the original agreement into closer conformity with Canada's later Social Security agreements, and thereby clarifies the intent of the provisions.

Canada provides old-age, survivors, and disability benefits through two separate programs--the Old Age Security (OAS) Program and the Canada Pension Plan (CPP)--which together make up what is often described as a two-tier Social Security system. Old Age Security, the first tier, is a noncontributory program applicable in all of Canada which pays old-age benefits and certain income-tested supplements to Canadian residents in proportion to the number of years they have resided in Canada. The Canada Pension Plan constitutes the second tier and is a contributory, earnings-related social insurance program that pays retirement benefits, as well as survivors and disability benefits. The CPP applies in all of Canada except the province of Quebec (which has its own, but similar, second-tier program).

In addition to updating and clarifying the Canadian benefit provisions of the original agreement, the supplementary agreement

makes two substantive changes in these provisions. First, it authorizes the payment of a full spouse's allowance under the OAS program for persons in Canada who qualify for this benefit based on combined periods of U.S. coverage and Canadian residence. The OAS spouse's allowance is a means-tested benefit paid to persons in Canada between ages 60 and 64, who are spouses of OAS pensioners, or widows and widowers, and who resided in Canada for at least 10 years after age 18. Under the original U.S.-Canadian agreement, U.S. Social Security coverage can be used, if necessary, to meet the 10-year residence requirement, but in this case, the agreement authorizes payment of "a partial spouse's allowance under Part II.1 of the Old Age Security Act". Before 1984, this provision of Canadian law stipulated that the spouses's allowance would be reduced if the beneficiary had resided in Canada for less than 40 years. Beginning in 1984, the full allowance has been paid to anyone who meets the eligibility requirements. The supplementary agreement makes clear that people who qualify for the spouse's allowance based on combined U.S. and Canadian coverage will also receive the full benefit.

The supplementary agreement also introduces a slightly different method of computing certain CPP flat-rate disability and survivors benefits when entitlement to the benefits is based on combined U.S. and Canadian coverage credits. The new computation method is expected to result in higher benefit amounts in most cases.

SUPPLEMENTARY AGREEMENT

ANNOTATIONS AND COMMENTS

SECOND SUPPLEMENTARY AGREEMENT
Amending the Agreement

between

the Government of the United States of America
and the Government of Canada
with respect to Social Security

The Government of the United States of America
and
the Government of Canada,

Noting the Agreement between them with respect to
Social Security, signed at Ottawa on March 11,
1981, and the Supplementary Agreement amending
that Agreement, signed at Ottawa on May 10, 1983,
and

Having determined the need to adjust certain pro-
visions of the Agreement,

Have decided to conclude a second Supplementary
Agreement and, to this end,

Have agreed as follows:

This Supplementary Agreement will amend the U.S.-
Canadian Social Security Agreement (TIAS 10863)
that was signed on March 11, 1981, and which
entered into force on August 1, 1984. The origi-
nal agreement was amended once before by a supple-
mentary agreement that entered into force at the
same time as the original agreement.

The original Agreement, like other U.S. agreements
concluded pursuant to section 233 of the Social
Security Act, has two main purposes. First, it
eliminates dual Social Security coverage, the
situation that occurs when a person from one
country works in the other country and is required
to pay Social Security taxes to both the United
States and Canada on the same earnings. The
Agreement includes rules that assign a worker's
coverage to only one country.

Second, the Agreement helps prevent gaps in bene-
fit protection for workers who have divided their
careers between the United States and Canada.
Such workers may fail to qualify for Social Secu-
rity benefits from one or both countries because
they have not worked long enough to meet minimum
eligibility requirements. Under the Agreement,
these workers may qualify for partial U.S. or
Canadian benefits based on "totalized" (i.e.,
combined) credits from both countries.

SUPPLEMENTARY AGREEMENT

ANNOTATIONS AND COMMENTS

The new Supplementary Agreement is intended to update the original Agreement to take account of changes in U.S. and Canadian law that have occurred since the original Agreement was negotiated. It also amends the Canadian benefit provisions of the original Agreement to bring them into closer conformity with Canada's more recent agreements. In addition, the Supplementary Agreement provides explicit authority for the two countries to provide mutual assistance in administering each country's Social Security program.

Article 1

For the purposes of this Supplementary Agreement:

- (a) "the Agreement" means the Agreement between the Government of the United States of America and the Government of Canada with respect to Social Security, signed at Ottawa on March 11, 1981, as amended by the Supplementary Agreement Amending the Agreement between the Government of the United States of America and the Government of Canada with respect to Social Security, signed at Ottawa on May 10, 1983;
- (b) any other term has the meaning assigned to it in the Agreement.

Article 2

Article I of the Agreement is amended as follows:

Article 1(a) specifies that the term "Agreement", when used in this second Supplementary Agreement, means the original U.S.-Canadian Social Security Agreement as revised by the first Supplementary Agreement. The previous Supplementary Agreement was signed in 1983 and entered into force together with the principal Agreement on August 1, 1984.

Article 1(b) provides that the terms used in both the original Agreement and this Supplementary Agreement will have the same meaning as they have in the original Agreement.

Article 2 would revise Article I of the original Agreement to update the definitions of several terms used in the Agreement.

SUPPLEMENTARY AGREEMENT

ANNOTATIONS AND COMMENTS

- (a) In paragraph (1), the word "and" between the words "Guam" and "American Samoa" is replaced by a comma (","), and the words "and the Northern Mariana Islands" are added immediately after "American Samoa".
- (b) In paragraph (4), the words "Secretary of Health and Human Services" are deleted, and the words "Commissioner of Social Security" are substituted in their place.
- (c) In paragraph (5), the words "Department of National Health and Welfare" are deleted, and
- The definition of United States "territory" in Article I(1) of the original U.S.-Canadian Social Security Agreement is identical to the definition of "United States" in title II of the U.S. Social Security Act. That definition includes the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa, but not the Northern Mariana Islands (NMI). However, the Covenant establishing the NMI Commonwealth in political union with the United States provides that the U.S. Social Security program is to apply in the NMI as it applies in Guam. Because all U.S. Social Security agreements apply to Guam, the U.S. Social Security Administration began applying the agreements to the NMI as of January 1, 1987, when the U.S. Social Security program was first extended there. Article 2(a) makes clear that the definition of United States "territory" includes the NMI.
- Article 2(b) revises the definition of "Competent Authority" in Article I(4) of the original Agreement. The term refers to the Government entity in each country with ultimate responsibility for administering the Social Security program, including the provisions of the Agreement. The revision takes into account the enactment of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103-296) which removed the Social Security Administration from the Department of Health and Human Services and established it as an independent agency effective March 31, 1995. The revision makes no change in the definition of "Competent Authority" as the term applies to Canada.
- Article 2(c) revises the definition of "Agency" in Article I(5) of the original Agreement. This term

SUPPLEMENTARY AGREEMENT

the words "Department of Employment and Immigration (designated by Human Resources Development)" are substituted in their place; and the hyphen (" - ") and the word "Taxation" are deleted.

(d) In paragraph (9), the period (".") at the end thereof is deleted, and a semi-colon (";") is substituted in its place.

(e) The following new paragraphs (10) and (11) are inserted immediately after paragraph (9):

"(10) "Government of Canada" means the Government in its capacity as representative of Her Majesty the Queen in right of Canada;

(11) Any term not defined in this Article has the meaning assigned to it in the applicable laws."

Article 3

Article II of the Agreement is amended as follows:

ANNOTATIONS AND COMMENTS

refers to the administrative body in each country responsible for taking and processing claims and making coverage determinations under each country's Social Security laws. The revision conforms the terminology of the Agreement to recent changes in the designation of the Canadian administrative bodies. The revision does not affect the designation of the Social Security Administration as the agency for the United States.

Article 2(d) and (e) add a new definition to Article I of the original Agreement.

New Article I, paragraph 10, of the Agreement, which is added at Canada's request, defines "Government of Canada". The Canadian authorities believe this definition is necessary because the term, which is used in the preamble and signature lines of the Agreement, is not clearly defined in Canadian law.

New Article I, paragraph 11, of the Agreement is intended to make clear that each country will assign to any undefined terms used in the Agreement the same meaning as they are given under that country's national laws.

SUPPLEMENTARY AGREEMENT

ANNOTATIONS AND COMMENTS

(a) In paragraph (1)(a)(ii), "1954" is deleted, and "1986" is substituted in its place.

Article II(1)(a)(ii) of the original Agreement makes clear that the Social Security tax provisions of the U.S. Internal Revenue Code of 1954 are among the laws to which the Agreement applies. Article 3(a) of the Supplementary Agreement merely conforms this designation to the current title of the U.S. tax law.

(b) Paragraph (3) is deleted, and the following new paragraphs (3) and (4) are substituted in its place:

Article II(3) of the original Agreement stipulates that the Agreement will automatically apply to any future laws enacted by a Contracting State to amend provisions of the Social Security laws covered by the Agreement. Article 3(b) of the Supplementary Agreement modifies the wording of Article II(3) to make clear that the Agreement will also apply to future laws that supplement, consolidate or supersede existing Social Security laws. The amendment makes no substantive change.

"(3) Subject to paragraph (4), this Agreement shall also apply to laws which amend, supplement, consolidate or supersede the laws specified in paragraph (1).

(4) This Agreement shall apply to laws which extend the laws of a Contracting State to new categories of beneficiaries unless an objection on the part of that Contracting State has been communicated to the other Contracting State not later than three months following the entry into force of such laws."

Article II(4) of the Agreement, as revised by the Supplementary Agreement, provides for a possible exception to the general principle in Article II(3). Under Article II(4), if either country enacts legislation in the future that creates new categories of beneficiaries not now included in the laws listed in Article II(1) of the Agreement, the country enacting the legislation may exclude the new category from the scope of the Agreement by giving written notice to the other country within 3 months of the legislation's official publication.

(c) Paragraph (4) is renumbered as paragraph (5).

Article 4

Article V of the Agreement is amended as follows:

Article 4 is intended to bring the wording of Article V of the Agreement into closer conformity

SUPPLEMENTARY AGREEMENT

ANNOTATIONS AND COMMENTS

with the United States' later Social Security agreements and clarify the intent of Article V(2).

(a) Paragraph 2(a) is revised to read as follows:

"Where a person who is normally employed in the territory of one Contracting State and who is covered under its laws in respect of work performed for an employer having a place of business in that territory is sent by that employer to work for the same employer in the territory of the other Contracting State, the person shall be subject to the laws of only the first Contracting State in respect of that work, as if it were performed in the territory of the first Contracting State. The preceding sentence shall apply provided that the period of work in the territory of the other Contracting State is not expected to exceed 60 months. For purposes of applying this sub-paragraph, an employer and an affiliated company of that employer (as defined under the laws of the Contracting State from which the person was sent) shall be considered one and the same, provided that the employment in the other Contracting State would have been subject to the laws on compulsory coverage of the Contracting State from which the person was sent in the absence of this Agreement."

Article V(1) of the original Agreement provides that a person who works in the United States or Canada will generally be subject to Social Security coverage only in the country in which the work is performed. Article V(2)(a) of the Agreement contains an exception to the "territoriality" rule in Article V(1). This exception provides that an employee who has been covered under Social Security in the United States or Canada for work performed for an employer located in that country, and who is then transferred to work in the other country for the same employer for a period of 60 months or less will continue to be covered by the country from which the employee has been sent.

The revised wording of Article V(2)(a) includes the words "normally employed" in the first line. These words make clear that, in order for the 60-month exemption rule to apply, the employee who is being transferred must have been working on a regular basis in the territory of the first country before being sent to the other country. This change is intended to prevent application of the rule in situations where the employee does not have a current connection to the labor market in the first country. For example, the rule in Article V(2) would generally not apply to a person who has been working in another country but who is brought briefly to the United States to sign an employment contract with a U.S. employer before being temporarily transferred to Canada. In this case, Article V(2) would not apply since the individual did not have a current connection to the U.S. economy; rather, the territoriality rule

SUPPLEMENTARY AGREEMENT

ANNOTATIONS AND COMMENTS

in Article V(1) would apply so that the worker would be subject only to Canadian law.

The revised wording of Article V(2) also clarifies that the 60-month exemption rule only applies when the employee is sent from one country to the other to work for the same employer or, in certain situations, an affiliate of that employer in the other country.

Finally, the revised wording of Article V(2) clarifies that the exemption from host-country Social Security coverage and taxation applies only as long as the employer and employee expect the assignment to last a total of 60 months or less. This is the interpretation given to the corresponding provision in all U.S. agreements. The exemption does not apply for the first 60 months of an assignment if the employer and employee expect the total duration to exceed 60 months.

(b) Paragraph (9) is deleted.

Article 4(b) of the Supplementary Agreement deletes a provision of the original Agreement that is no longer necessary. A drafting error in the 1977 law that authorized the United States to enter into international Social Security agreements prevented the United States from imposing Social Security taxes on certain earnings which would have been covered by the U.S. Social Security system pursuant to the coverage rules ordinarily included in such agreements. For this reason, it was necessary to include a proviso in Article V(9) of the Agreement to make clear that the Agreement would not result in U.S. coverage if there were no authority under U.S. law to collect taxes with respect to that coverage. A provision in the Social Security Amendments of 1983, however, authorizes the United States to collect Social

SUPPLEMENTARY AGREEMENT

ANNOTATIONS AND COMMENTS

Security taxes on earnings covered under a bilateral Social Security agreement, thus correcting the deficiency in the original 1977 legislation. With this change in the law, Article V(9) has become inoperative, and Article 4(b) of the Supplementary Agreement therefore deletes it.

Article 5

Chapter 2 of Part III of the Agreement is deleted, and the following new Chapter 2 is substituted in its place:

Chapter 2 of Part III of the Agreement establishes the basic rules for determining entitlement to and the amount of Canadian benefits for people who have earned periods of Social Security coverage in both Canada and the United States. Article 5 of the Supplementary Agreement deletes Chapter 2 of the original Agreement and substitutes a new Chapter 2 in its place.

The primary purpose of the new Chapter 2 is simply to conform the language of the Canadian benefit provisions to similar provisions in later agreements. Canada has concluded with other countries. In addition, the new chapter introduces two minor substantive changes. First, it authorizes the payment of a full spouse's allowance under the Old Age Security program for persons who qualify based on combined periods of U.S. coverage and Canadian residence. Second, it provides for a different method of calculating the flat-rate portion of the Canada Pension Plan disability and survivors benefit.

BACKGROUND

Canada provides old-age, survivors, and disability benefits through two separate programs--the Old Age Security Program (OAS) and the Canada Pension Plan (CPP)--which together make up what is often

SUPPLEMENTARY AGREEMENT

ANNOTATIONS AND COMMENTS

described as a two-tier social security system. Old Age Security, the first tier, is a noncontributory program applicable in all of Canada which pays old-age benefits and certain income-tested supplements to all residents in proportion to the number of years they have resided in Canada. The Canada Pension Plan constitutes the second tier and is a contributory, earnings-related program that pays retirement benefits, as well as survivors and disability benefits. The CPP is applicable throughout Canada, except in the Province of Quebec.

Under a constitutional prerogative, Quebec has established its own second-tier program, the Quebec Pension Plan (QPP), which is, in all major respects, similar to the CPP. Special arrangements necessary to coordinate the U.S. Social Security program and the QPP are contained in a separate understanding, as provided for in Article XX of the original Agreement. This Supplementary Agreement does not affect the provisions of the U.S.-Quebec understanding.

OAS Benefits

Three types of benefits are payable under the Old Age Security Program: an old-age pension, a guaranteed income supplement and a spouse's allowance. The guaranteed income supplement and the spouse's allowance are payable only in cases where entitlement to an old-age pension has been established, and only to persons residing in Canada. The OAS program does not pay disability or death benefits or benefits for dependents.

SUPPLEMENTARY AGREEMENT

ANNOTATIONS AND COMMENTS

An OAS **old-age** pension is payable to anyone age 65 or over who meets the minimum residence requirements. The residence requirements vary depending on whether the person lives in Canada or in another country:

- o A minimum of 10 years of residence in Canada after age 18 is required for a person to qualify for an old-age pension while in Canada.
- o A minimum of 20 years of residence in Canada after age 18 is required to receive an old-age pension indefinitely while outside Canada. (If a person has at least 10 years of residence in Canada, but less than 20 years, the old-age pension is payable outside Canada for only 6 months following the month of departure from Canada.)

The amount of the OAS old-age pension depends on the length of a person's residence in Canada after reaching age 18. For entitlement to a full pension, a person must have resided in Canada for at least 40 years after age 18. A person who has resided in Canada for at least 10 years (the minimum period required for entitlement), but less than 40 years, receives a partial pension payable at the rate of 1/40 of the full pension for each year of Canadian residence after age 18.

The current rules for calculating the amount of an old-age pension came into force on July 1, 1977. Transitional rules apply to people who were 25 years of age or older on that date and who met certain other conditions. Under these transitional rules, a full old-age pension is payable to a

person having as little as 10 years of residence in Canada. However, the 20-year requirement must still be met to export the benefit outside Canada.

The **guaranteed income supplement** is an income-tested benefit payable to OAS pensioners with little or no income besides their old-age pension. The guaranteed supplement is payable outside Canada for only 6 months following the month a person leaves Canada.

Like the guaranteed income supplement, the **spouse's allowance** is an income-tested benefit. To qualify, a person must be age 60-64, and be either the spouse of an OAS old-age pensioner or a widow or widower. In addition, he or she must have resided in Canada for a minimum of 10 years after age 18. If either the spouse or the pensioner is outside Canada for more than 6 months, the spouse's allowance is suspended.

CPP Benefits

The Canada Pension Plan, which went into effect on January 1, 1966, pays retirement, survivors and disability benefits based on the length of the person's working career and the level of the person's average earnings. All CPP benefits are payable outside Canada with no restrictions.

Under CPP, **retirement pensions** are payable to contributors 65 years of age and over, or as early as age 60 at a reduced rate. A retirement pension may be paid based on as little as one CPP contribution (i.e., 1 year in covered employment or self-employment during which the person earned above a specified minimum amount).

To qualify for CPP disability benefits, a person must have paid contributions for a "minimum qualifying period," which generally equates to 5 out of the last 10 calendar years immediately preceding disability onset. If a person has not paid contributions for the minimum qualifying period, the person can still qualify if he or she has paid contributions for 2 of the last 3 calendar years preceding onset. Child's benefits are payable to the dependent children of disabled contributors provided the children are under age 18 or under age 25 and in school full time.

For a worker's survivors to qualify for CPP survivors benefits, the worker must have paid contributions for a "minimum qualifying period," which varies from 3 to 10 years depending on the deceased worker's age at death. Children of the deceased contributor who are under age 18, or under age 25 and in school, are each entitled to orphan's benefits equal to the flat-rate component of the CPP disability benefit.

The amount of CPP benefits depends on the type of benefit. Some benefits (e.g., the retirement and survivor's pensions payable to a person age 65 or over) are based solely on the worker's covered earnings during the worker's "contributory period." The contributory period is the period from January 1, 1966 (or attainment of age 18, if later) up to the date of initial receipt of retirement benefits or death, and disregarding any periods of disability. Other benefits (e.g., "disabled contributor's child's benefit" and orphan's benefit) are flat-rate. Still others (disability pension and survivors pension payable to persons under age 65) have both an earnings-related and a flat-rate component.

SUPPLEMENTARY AGREEMENT

"Chapter 2
PROVISIONS APPLICABLE TO CANADA

ARTICLE VIII

(1) (a) If a person is not entitled to the payment of a benefit because he or she has not accumulated sufficient periods of residence under the Old Age Security Act, or periods of coverage under the Canada Pension Plan, the entitlement of that person to the payment of that benefit shall, subject to sub-paragraph (1)(b), be determined by totalizing these periods and those specified in paragraph (2), provided that the periods do not overlap.

ANNOTATIONS AND COMMENTS

Article VIII of new Chapter 2 provides that Canada will totalize (i.e., combine) periods of U.S. Social Security coverage and periods of residence credited under the OAS program, if necessary, to establish a person's right to receive an OAS benefit. Similarly, Canada will totalize U.S. coverage with periods of coverage credited under the CPP, if necessary, to establish entitlement to CPP benefits. If a period of U.S. coverage overlaps (i.e., coincides in time) with a period of Canadian coverage, Canada will not count that period of U.S. coverage.

Article VIII(1)(a) stipulates that a person's U.S. coverage credits and Canadian residence credits may be combined to meet the minimum residence requirements described above for an OAS old-age benefit or for a spouse's allowance. There is no need to totalize U.S. coverage and Canadian residence to establish eligibility for a guaranteed income supplement since entitlement to this benefit is contingent on entitlement to an old-age pension. Article VIII(1)(b), in conjunction with Article VIII(2), makes it clear that, when totalizing U.S. coverage and Canadian residence to establish OAS benefit eligibility, Canada will count a person's U.S. Social Security credits earned after 1951 and after age 18, along with his or her periods of residence in Canada after 1951 and after age 18.

SUPPLEMENTARY AGREEMENT

ANNOTATIONS AND COMMENTS

As it applies to CPP benefits, Article VIII(1)(a) provides that Canada will combine U.S. coverage with periods of coverage under the CPP in determining whether a person meets the minimum coverage requirements for disability, survivors or death benefits. Because a person may qualify for a CPP retirement pension with as little as one CPP contribution, it is not necessary for Canada to count a person's U.S. coverage credits in determining entitlement to this benefit. When totalizing U.S. and CPP coverage credits, Canada will only count U.S. coverage completed after 1965 (i.e., after the start of the CPP program) in accordance with Article XIX(2) of the Agreement.

(b) In the application of sub-paragraph (1)(a) of this Article to the Old Age Security Act:

(i) only periods of residence in Canada completed on or after January 1, 1952, including periods deemed as such under Article VI of this Agreement, shall be taken into account; and

(ii) if the total duration of those periods of residence is less than one year and if, taking into account only those periods, no right to a benefit exists under that Act, the agency of Canada

The Old Age Security Program became effective on January 1, 1952. Therefore, in applying the totalization provision set forth in Article VIII(1)(a), Canada will count periods of residence in Canada completed on or after that date. Article VI of the Agreement provides that certain periods during which a non-Canadian resident was covered under the CPP in accordance with the coverage provisions of the Agreement will be considered equivalent to periods of residence in Canada for purposes of determining entitlement to benefits under the Old Age Security Act. Article VIII(1)(b)(i) makes it clear that these periods may also be totalized with periods of U.S. Social Security coverage for purposes of determining entitlement to OAS benefits.

Article VIII(1)(b)(ii) stipulates that the totalization provision of Article VIII(1)(a) may only be used to qualify for OAS benefits if a person has at least 1 year of actual Canadian residence or periods deemed equivalent to Canadian residence

SUPPLEMENTARY AGREEMENT

ANNOTATIONS AND COMMENTS

shall not be required to pay a benefit in respect of those periods by virtue of this Agreement.

(2) (a) For purposes of determining entitlement to the payment of a benefit under the Old Age Security Act, a quarter of coverage credited under United States laws on or after January 1, 1952 and after the age at which periods of residence in Canada are credited for purposes of that Act shall be considered as three months of residence in the territory of Canada.

(b) For purposes of determining entitlement to the payment of a benefit under the Canada Pension Plan, a calendar year including at least one quarter of coverage credited under United States laws shall be considered as a year of coverage credited under the Canada Pension Plan.

ARTICLE IX

(1) If a person is entitled to the payment of an Old Age Security pension or a spouse's allowance solely through the application of the totalizing provisions of Article VIII, the agency of Canada shall calculate the amount of the pension or spouse's allowance payable to that person in conformity with the provisions of the Old Age Security Act governing the payment of a partial pension or a spouse's allowance, exclusively on the basis of the periods of residence in Canada on or after January 1, 1952 which may be considered under

pursuant to Article VI. In determining whether the 1-year requirement is met, Canada will count a person's periods of residence in Canada after 1951 and after age 18.

Article VIII(2)(a) specifies that each U.S. quarter of coverage earned after 1951 and after the claimant's 18th birthday will be considered equivalent to 3 months of residence in Canada under the Old Age Security Act. The Canadians will divide a person's total U.S. quarters of coverage by four to arrive at the number of years of residence to be credited for eligibility purposes under the Old Age Security Act.

Article VIII(2)(b) provides that a year in which at least one quarter of coverage is credited under U.S. laws will be considered a year of contributions to the CPP for purposes of determining entitlement to a CPP benefit.

Article IX(1) describes the method Canada will use to calculate the amount of an OAS old-age pension or a spouse's allowance when entitlement to the benefit is established through totalization of periods of U.S. coverage and Canadian residence. The amount of both benefits will be calculated in accordance with the provisions of the Old Age Security Act.

Thus, for an old-age pension, the amount payable is 1/40 of the full pension for each year of residence in Canada after 1951 and after reaching age 18. For a spouse's allowance, the amount pay-

SUPPLEMENTARY AGREEMENT

that Act or are deemed as such under Article VI of this Agreement.

ANNOTATIONS AND COMMENTS

able will be based on the income of the applicant and, in the case of a couple, the combined income of the applicant and the spouse--the same as would be the case if entitlement had been based on the Old Age Security Act alone, without recourse to the Agreement.

No rule has been included for calculating the guaranteed income supplement since entitlement to this income-tested benefit is contingent on entitlement to an OAS old-age pension and the amount is determined under the normal provisions of the Old Age Security Act.

- (2) Paragraph (1) shall also apply to a person outside Canada who would be entitled to the payment of a full pension in Canada but who has not resided in Canada for the minimum period required by the Old Age Security Act for entitlement to the payment of a pension outside Canada.

Article IX(2) of the Agreement deals with the special case of an individual outside Canada who, as a result of the transitional rules described above, would be eligible to receive a full OAS pension in Canada on the basis of at least 10 years of residence, but who does not have the 20 years of residence needed to receive a pension outside Canada. If the 20-year requirement is met by totalizing U.S. coverage and Canadian residence, a partial pension, calculated on the basis of years of actual residence in Canada (after 1951 and after age 18 and up to the date the pension was approved), will be paid abroad indefinitely.

- (3) Notwithstanding any other provision of this Agreement:

Article IX(3) of the Agreement establishes two restrictions on the benefit portability provisions of Article IV of the Agreement.

SUPPLEMENTARY AGREEMENT

- (a) an Old Age Security pension shall be paid to a person who is outside Canada only if that person's periods of residence, totalized as provided in Article VIII, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for entitlement to the payment of a pension outside Canada; and
- (b) a spouse's allowance and a guaranteed income supplement shall be paid to a person who is outside of Canada only to the extent permitted by the Old Age Security Act.

ARTICLE X

If a person is entitled to the payment of a benefit under the Canada Pension Plan solely through the application of the totalizing provisions of Article VIII, the agency of Canada shall calculate the amount of benefit payable to that person in the following manner:

- (a) the earnings-related portion of the benefit shall be determined in conformity with the provisions of the Canada Pension Plan, exclusively on the basis of the pensionable earnings under that Plan; and

ANNOTATIONS AND COMMENTS

Paragraph 3(a) specifies that Canada will pay an OAS old-age pension to a person who is outside Canada only if his or her periods of residence in Canada, totalized with periods of U.S. coverage, equal at least 20 years. A person who has the 10 years needed for entitlement to an old-age pension while residing in Canada, but who does not have the 20 years (even after totalizing) required for export of that pension abroad, will not be entitled to receive the pension outside Canada.

Paragraph 3(b) specifies that the guaranteed income supplement and the spouse's allowance will be paid to a person who is outside Canada only to the extent permitted by the Old Age Security Act. Thus, receipt of these benefits will be limited to the month in which the individual leaves Canada and the following 6 months.

Article X describes the method Canada will use to calculate the amount of a CPP benefit when entitlement is established based on totalized U.S. and CPP coverage credits. Under Article X(a), Canada will calculate the earnings-related portion of a totalization benefit on the basis of the person's actual earnings credited under the CPP. The computation method is the same one used to compute benefits under Canadian law when a person qualifies without the need to totalize.

SUPPLEMENTARY AGREEMENT

ANNOTATIONS AND COMMENTS

(b) the flat-rate portion of the benefit shall be determined by multiplying:

(i) the amount of the flat-rate portion of the benefit determined in conformity with the provisions of the Canada Pension Plan

by

(ii) the fraction which represents the ratio of the periods of coverage under the Canada Pension Plan in relation to the minimum qualifying period required under that Plan to establish entitlement to that benefit, but in no case shall that fraction exceed the value of one."

Article X(b), like Article XI(3)(c) of the original Agreement, provides that the flat-rate portion of a CPP benefit based on totalization will be prorated. The Supplementary Agreement, however, introduces a somewhat different method of calculating the pro rata flat-rate amount, which is intended to relate the benefit more closely to the worker's Canadian coverage career.

Under the existing agreement, the pro rata amount is calculated by multiplying the flat-rate amount by a fraction with the numerator equal to the number of years during which the worker actually contributed to CPP, and the denominator equal to that number plus the number of years of U.S. coverage needed to meet the CPP coverage requirements. For example, if a person paid CPP contributions from 1966 through 1973 (8 years) and then had U.S. Social Security coverage from 1974 through 1994 when he became disabled, the fraction for prorating the flat-rate component of the CPP disability benefit would be $8 \div (8 + 2)$ or $8/10$, with 2 corresponding to the number of years of U.S. coverage needed to meet the 2-out-of-3 year alternative requirement for CPP disability benefits.

According to Canadian authorities, in most cases, the new calculation method will result in higher benefit amounts than the existing method. Under the new method, the denominator of the pro rata fraction will equal the "minimum qualifying period" (defined in the CPP law as 5 years), subject to the stipulation that the denominator can never exceed the numerator (i.e., the pro rata fraction cannot exceed one). In the above example, since the number of years of CPP contributions--eight--divided by the number of years in the minimum qualifying period--five--would exceed one, the pro

SUPPLEMENTARY AGREEMENT

ANNOTATIONS AND COMMENTS

rata fraction is equated to one, and the full flat-rate component of the CPP disability benefit would be paid.

Article 6

Article XII of the Agreement is amended as follows:

(a) The following new sub-paragraph (b) is inserted immediately after sub-paragraph (a):

"(b) To the extent permitted by the laws which they administer and any other relevant national statutes, communicate to each other any information necessary for the application of this Agreement;"

(b) The existing sub-paragraphs (b) and (c) are respectively redesignated as sub-paragraphs (c) and (d).

Article 7

Article XIII is amended by adding the following sentence at the end thereof:

"In accordance with arrangements to be agreed upon pursuant to Article XII(a), the Competent Authorities and agencies may also assist each other in administering the laws to which this Agreement applies."

Article XII of the original Agreement has been revised at the request of Canada to provide clear legal authority for the U.S. and Canadian competent authorities to exchange information necessary to administer the Agreement. This authority is already included in the Administrative Agreement that entered into force for the two countries at the same time as the principal U.S.-Canadian Social Security Agreement. Although the Administrative Agreement has the same force of law for the United States as the principal Agreement, the Canadian authorities do not submit their Social Security administrative agreements to the Canadian Parliament and, therefore, the authorization to exchange information should be included in the principal Agreement as well.

SSA and the Canadian Social Security agencies believe they can improve the administration of their respective Social Security programs by entering into arrangements providing for mutual administrative assistance. SSA currently has such an arrangement with the United Kingdom. Under such arrangements, SSA and the foreign Social Security agency assist each other in such projects as verifying continuing eligibility factors for each country's beneficiaries residing in the other country. Before undertaking such projects, however, the Canadian authorities requested that Article XIII of the original U.S.-Canadian Social

SUPPLEMENTARY AGREEMENT

ANNOTATIONS AND COMMENTS

Security Agreement be revised to provide their agencies with specific authority to do so.

Article 8

- (1) The Contracting States shall notify each other in writing, through the diplomatic channel, of the completion of their respective legal procedures required for the entry into force of this Supplementary Agreement. This Supplementary Agreement shall enter into force on the first day of the fourth month after the date of the last notification.

Each country will follow its own legal procedures for approval of the Supplementary Agreement. In Canada, the Supplementary Agreement is subject to parliamentary review. In the United States, it must be presented to the Congress for a review period during which at least one House has been in session on each of 60 days as required by section 233(e) of the Social Security Act. Article 8(1) provides that the Supplementary Agreement will enter into force on the first day of the fourth calendar month after each Government has received formal notification of approval from the other Government.

- (2) On the entry into force of this Supplementary Agreement, any reference in the Agreement to "this Agreement" shall be taken to mean the Agreement as amended by this Supplementary Agreement.

Once the Supplementary Agreement enters into force, references to the "Agreement" will be understood to mean the original U.S.-Canadian Social Security Agreement, as amended by this Supplementary Agreement (as well as the first Supplementary Agreement, signed May 10, 1983).

- (3) The application of this Supplementary Agreement shall not result in any reduction in the amount of a benefit to which entitlement was established prior to its entry into force.

In a few cases, the changes introduced by the Supplementary Agreement in the method of computing the flat-rate portion of certain Canadian benefits could result in smaller benefit amounts than previously. Article 8(3) guarantees that benefits which are already being paid at the time the Supplementary Agreement becomes effective will not be reduced as a result of its entry into force.

SUPPLEMENTARY AGREEMENT

- (4) Subject to paragraph (5), this Supplementary Agreement shall remain in force without any limitation on its duration.
- (5) In the event of the termination of the Agreement through the application of paragraph (1) of Article XXI thereof, this Supplementary Agreement shall also be terminated, with effect on the same day as the termination of the Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Supplementary Agreement.

Done in two copies at Ottawa, this 28th day of May, 1996, in the English and French languages, both texts being equally authentic.

James D. Walsh
FOR THE GOVERNMENT OF
THE UNITED STATES
OF AMERICA

D. Young
FOR THE GOVERNMENT
OF CANADA

ANNOTATIONS AND COMMENTS

Article 8(4) and 8(5) provide that this Supplementary Agreement shall have the same period of validity as the original Agreement.

The supplementary agreement was signed on May 28, 1996, in Ottawa by the Chargé d'Affaires of the United States Embassy, James D. Walsh, and the Canadian Minister of Human Resources Development, Douglas Young.

ANNEX B

REPORT TO CONGRESS ON THE FINANCIAL EFFECT OF
THE UNITED STATES-CANADIAN
SUPPLEMENTARY SOCIAL SECURITY AGREEMENT
SIGNED ON MAY 28, 1996

Under the subject supplementary agreement, the basic provisions of the current agreement between the United States and Canada regarding the elimination of dual coverage and taxation would be modified in several ways. The current totalization agreement contains a provision under which an employee who works for an employer in one country and who is transferred to work in the other country for 5 years or less continues to be covered by the country from which he was sent. The supplementary agreement includes a provision that is intended to make clear that, in order for this rule to apply, the employee who is being transferred must have been working for the sending employer on a regular basis in the territory of the first country before being sent to the other country. With this change, some employees, and their employers, would now pay taxes to the country in which the work is performed, and not to the country from which they came. It is expected that few workers would be affected by this change. We estimate that this provision would have a negligible effect on both the U.S. and the Canadian social security systems, i.e., a net change of less than \$500,000 in tax revenues each year.

Two changes would be made in the method of computing Canadian totalized benefit amounts. The first change authorizes the payment of a full, rather than reduced, spouse's allowance under the Old Age Security Program, for persons in Canada who qualify based on combined periods of U.S. coverage and Canadian residence. Since Canada is already paying the full allowance to such persons, this change would have no effect on Canadian benefit payments. The second change would liberalize the method of computing the flat-rate portion of the disability and survivor benefits under the Canada Pension Plan. It is estimated that this change would have a negligible effect on the Canadian social

security system, i.e., an increase in benefit payments of less than \$500,000 each year for fewer than 1,000 persons each year. This is based on published data for 1994 on persons receiving totalized benefits from Canada based in part on earnings in the United States.

The agreement also facilitates an arrangement for mutual administrative assistance between the two countries. This should lead to some savings in administrative costs for each country, but is not expected to have a significant effect on either tax revenues or benefit payments.

Social Security Administration
February 7, 1996

ANNEX C

AGREEMENT
BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF CANADA
WITH RESPECT TO SOCIAL SECURITY

Agreement signed at Ottawa March 11, 1981, entered into force August 1, 1984; as amended by a supplementary agreement signed at Ottawa, May 10, 1983, entered into force August 1, 1984, and by a second supplementary agreement signed at Ottawa May 28, 1996, not yet in force.

The following is a composite version of the U.S.-Canadian Social Security Agreement, marked to show revisions made by the Second Supplementary Agreement, signed May 28, 1996. Text in underlined bold italics has been added; text in brackets with strikeout markings has been deleted.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF CANADA WITH RESPECT TO SOCIAL SECURITY

The Government of the United States of America and the
Government of Canada,

Resolved to co-operate in the field of social security,

Have decided to conclude an agreement for this purpose, and,

Have agreed as follows:

PART I - GENERAL PROVISIONS

ARTICLE I

For the purpose of this Agreement:

- (1) "Territory" means,

as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, ~~[and]~~ American Samoa and the Northern Mariana Islands, and as regards Canada, the territory of Canada;

- (2) "National" means,

as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended, and as regards Canada, a citizen of Canada;

- (3) "Laws" means,

the laws and regulations specified in Article II;

- (4) "Competent Authority" means,

as regards the United States, the ~~[Secretary of Health and Human Services]~~ Commissioner of Social Security, and

as regards Canada, the Minister or Ministers of the Crown responsible for the administration of the laws specified in Article II(1)(b);

- (5) "Agency" means,

as regards the United States, the Social Security Administration, and

as regards Canada, for all matters other than those related to contributions: the ~~[Department of National~~

~~Health and Welfare]~~ Department of Employment and Immigration (designated by Human Resources Development); for matters related to contributions: the Department of National Revenue [~~Taxation~~];

- (6) "Period of coverage" means,

a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage; a period of residence shall not be recognized as a period of coverage;

- (7) "Benefit" means,

any benefit provided for in the laws of either Contracting State;

- (8) "Stateless person" means,

a person defined as a stateless person in Article 1 of the Convention Relating to the Status of Stateless Persons dated September 28, 1954;

- (9) "Refugee" means,

a person defined as a refugee in Article 1 of the Convention Relating to the Status of Refugees dated July 28, 1951, and the Protocol to that Convention dated January 31, 1967[~~-~~].

(10) "Government of Canada" means the Government in its capacity as representative of Her Majesty the Queen in right of Canada;

(11) Any term not defined in this Article has the meaning assigned to it in the applicable laws.

ARTICLE II

(1) For the purpose of this Agreement, the applicable laws are:

(a) As regards the United States, the laws governing the Federal Old-Age, Survivors and Disability Insurance Program:

(i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections,

and

(ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of ~~[1954]~~ 1986 and regulations pertaining to those chapters;

(b) As regards Canada:

(i) the Old Age Security Act and regulations made thereunder,

and

(ii) the Canada Pension Plan and regulations made thereunder.

- (2) Unless otherwise provided in this Agreement, the applicable laws referred to in paragraph (1) of this Article do not include treaties or other agreements concluded between either Contracting State and a third State and laws or regulations promulgated for their implementation.
- (3) ~~[This Agreement shall also apply to future laws amending the laws specified in paragraph (1) of this Article.]~~
Subject to paragraph (4), this Agreement shall also apply to laws which amend, supplement, consolidate or supersede the laws specified in paragraph (1).
- (4) This Agreement shall apply to laws which extend the laws of a Contracting State to new categories of beneficiaries unless an objection on the part of that Contracting State has been communicated to the other Contracting State not later than three months following the entry into force of such laws.
- (5) Provincial social security legislation may be dealt with in understandings as specified in Article XX.

ARTICLE III

Unless otherwise provided, this Agreement shall apply to:

- (a) nationals of either Contracting State,
- (b) refugees,

- (c) stateless persons,
- (d) other persons with respect to the rights they derive from a national of either Contracting State, a refugee or a stateless person, and
- (e) nationals of a State other than a Contracting State who are not included among the persons referred to in paragraph (d) of this Article.

ARTICLE IV

- (1) Unless otherwise provided in this Agreement, the persons designated in Article III (a), (b), (c) or (d) who reside in the territory of either Contracting State shall, in the application of the laws of a Contracting State, receive equal treatment, with respect to the payment of benefits, with the nationals of that Contracting State.
- (2) Nationals of a Contracting State who reside outside the territories of both Contracting States shall receive benefits provided by the laws of the other Contracting State under the same conditions which the other Contracting State applies to its own nationals who reside outside the territories of both Contracting States.
- (3) Unless otherwise provided in this Agreement, the laws of a Contracting State under which entitlement to or payment of cash benefits is dependent on residence or presence in the territory of that Contracting State shall not be applicable to the persons designated in Article III who reside in the territory of the other Contracting State.

- (4) As regards the laws of Canada, paragraph (1) of this Article is extended to persons designated in Article III(e).

PART II

PROVISIONS ON COVERAGE

ARTICLE V

- (1) Except as otherwise provided in this Article, an employed person who works in the territory of one of the Contracting States shall, in respect of that work, be subject to the laws of only that Contracting State.
- (2) (a) ~~Where [an employed person is covered under the laws of one of the Contracting States in respect of work performed for an employer having a place of business in the territory of that Contracting State and is then required by that employer to work] a~~
person who is normally employed in the territory of one Contracting State and who is covered under its laws in respect of work performed for an employer having a place of business in that territory is sent by that employer to work for the same employer
 in the territory of the other Contracting State, the person shall be subject to the laws of only the first Contracting State in respect of that work, as if it were performed in the territory of the first Contracting State. The preceding sentence shall apply provided that the period of work in the territory of the other Contracting State ~~[does] is~~ not ~~expected to~~ exceed 60 months. For purposes of applying this sub-paragraph, an employer and an affiliated company of that employer (as defined

under the laws of the Contracting State from which the person was sent) shall be considered one and the same, provided that the employment in the other Contracting State would have been subject to the laws on compulsory coverage of the Contracting State from which the person was sent in the absence of this Agreement.

- (b) For the purpose of subparagraph (a), where a person is required to work in the territory of the other Contracting State for intermittent periods of short duration, each such period shall be considered a separate period of work.
- (c) With the prior mutual consent of the Competent Authorities of the Contracting States, subparagraph (a) shall also apply:
 - (i) where the employer does not have a place of business in the territory of the first Contracting State, or
 - (ii) where the period of work in the other Contracting State exceeds or is expected to exceed 60 months.
- (3) This Article shall not apply to the categories of persons mentioned in the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, and of the Vienna Convention on Consular Relations of April 24, 1963, unless such persons have waived their immunities and privileges with respect to the payment of social security contributions.

- (4) (a) Except as provided in subparagraph (b), this Article shall not apply to a person employed in the Government service of one of the Contracting States.
- (b) Where a person employed in the Government service of one of the Contracting States is covered under the laws of both Contracting States in respect of that employment, the following rules shall apply:
 - (i) a person in the Government service of one Contracting State who is sent to work within the territory of the other Contracting State shall be subject to the laws of only the first Contracting State in respect of that service;
 - (ii) a person hired locally to work in the Government service of one Contracting State within the territory of the other Contracting State shall be subject to the laws of only the other Contracting State in respect of that service.
- (c) For the purpose of this paragraph, "Government service" means,
 - (i) as regards the United States, service in the employ of the Government of the United States or any instrumentality thereof;
 - (ii) as regards Canada, service in the employ of the Government of Canada or a Province of Canada or a Canadian municipality.

- (5) Where, but for this Article, a person would be covered under United States laws as well as under the Canada Pension Plan in respect of employment as an officer or member of the crew on a ship or aircraft, that person shall, in respect of that employment, be subject only to the Canada Pension Plan if that person is a resident of Canada, and only to United States laws in any other case.
- (6) Where, but for this Article, a person would be covered under the laws of both Contracting States in respect of earnings from self-employment, that person shall, in respect thereof, be subject only to the laws of Canada if that person is considered to be resident in Canada for the purposes of the relevant provisions of those laws, and only to United States laws in any other case.
- (7) Where, but for this Article, a person would be covered under the laws of both Contracting States in respect of an activity that is considered to be self-employment by one of the Contracting States and employment by the other Contracting State, that activity shall be treated according to the provisions of this Article respecting self-employment if the person is a resident of the first Contracting State and according to the provisions of this Article respecting employment in any other case.
- (8) Where, by virtue of this Article, a person would be subject to the laws of Canada but coverage is not effected under those laws, the person shall be subject to United States laws.
- ~~[(9) The Agreement shall not result in coverage under United States laws if those laws do not provide for the collection of contributions with respect to such~~

~~coverage. Article V(1) shall apply when Article V(2) is not applicable as a result of the preceding sentence.]~~

- (10) Where a person covered under the laws of a Contracting State in accordance with this Agreement is also covered under the laws of the other Contracting State or a third State in accordance with the provisions of an agreement between a Contracting State and a third State, the Competent Authorities of the two Contracting States may agree to exclude the person from the application of this Agreement.
- (11) The Competent Authorities of the two Contracting States may, by common agreement, make exceptions in the application of this Article in respect of any person or category of persons.
- (12) The application of this Article shall be subject to such rules as the Competent Authorities of the two Contracting States may prescribe through arrangements made pursuant to Article XII (a) of this Agreement.

ARTICLE VI

- (1) Except as otherwise provided in this Article, where a person referred to in Article V(2) is subject to the laws of Canada, or the comprehensive pension plan of a province, during any period of residence in the territory of the United States, that period of residence, in respect of that person, his spouse and dependants who reside with him and who are not employed or self-employed during that period, shall be treated as a period of residence in Canada for the purposes of the Old Age Security Act.

- (2) Any calendar quarter during which a spouse or a dependant of a person referred to in Article V(2) is credited with a period of coverage under United States laws shall not be counted as residence in Canada for the purposes of the Old Age Security Act.
- (3) Except as otherwise provided in this Article, where a person referred to in Article V(2) is subject to United States laws during any period of residence in the territory of Canada, that period, in respect of that person, his spouse and dependants who reside with him and who are not employed or self-employed during that period, shall not be treated as residence in Canada for the purposes of the Old Age Security Act.
- (4) Except as otherwise provided in this Article, periods during which the spouse or dependant referred to in paragraph (3) of this Article is contributing to the Canada Pension Plan or the comprehensive pension plan of a province as a result of employment or self-employment shall be treated as periods of residence in Canada for the purposes of the Old Age Security Act.
- (5) Except as otherwise provided in this Article, any person who resides in the United States, is employed in Canada and is subject to the Canada Pension Plan or the comprehensive pension plan of a province shall be credited with one year of residence under the Old Age Security Act for each year of contributions under the Canada Pension Plan or the comprehensive pension plan of a province.
- (6) If a person referred to in paragraph (4) or (5) of this Article performs services which are covered as employment or self-employment under United States laws

and simultaneously performs other services which are covered as employment or self-employment under the Canada Pension Plan or a comprehensive pension plan of a province, that period of employment or self-employment shall not be treated as a period of residence for the purposes of the Old Age Security Act.

PART III

PROVISIONS ON BENEFITS

Chapter 1

PROVISIONS APPLICABLE TO THE UNITED STATES

ARTICLE VII

- (1) Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, periods of coverage completed under the Canada Pension Plan shall be taken into account to the extent they do not coincide with calendar quarters already credited as quarters of coverage under United States laws.
- (2) In determining eligibility for benefits under paragraph (1) of this Article, the agency of the United States shall credit four quarters of coverage for every year of contributions under the Canada Pension Plan certified as creditable by the agency of Canada; however, no quarter of coverage shall be credited for any calendar quarter already credited as a quarter of

coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

- (3) Where entitlement to a benefit under United States laws is established according to the provisions of paragraph (1) of this Article, the agency of the United States shall compute a pro rata primary insurance amount in accordance with United States laws based on the duration of the person's periods of coverage credited under United States laws. Benefits payable under United States laws shall be based on the pro rata primary insurance amount.
- (4) Entitlement to a benefit from the United States which results from paragraph (1) of this Article shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of paragraph (1) of this Article.

Chapter 2

PROVISIONS APPLICABLE TO CANADA

ARTICLE VIII

~~[(1) In this Article, "pension" means a monthly pension under Part I of the Old Age Security Act.]~~

~~[(2) (a) If a person is entitled to a pension under paragraph 3(1)(a) or (b) of the Act, the totalization provisions of subparagraphs (3)(a) and (b) of this Article may be used, if necessary,~~

~~to accumulate the required 20 years of residence in Canada for payment of a pension in the United States. Only a partial pension calculated in accordance with the Act may be paid.]~~

~~[(b) If a person is entitled to a partial pension under subsection 3(1.1) of the Act, that pension may be paid in the United States if the periods totalized according to subparagraphs (3)(a) and (b) of this Article equal not less than 20 years.]~~

~~[(3) (a) If a person is not entitled to a pension under the Old Age Security Act because of insufficient periods of residence, entitlement to a pension may be determined by totalizing periods of residence in Canada on or after January 1, 1952 and after the attainment of age 18, and periods of coverage under United States laws as specified in subparagraph (3)(b) of this Article, but where the periods coincide, only one period shall be counted.]~~

~~[(b) For the purposes of establishing entitlement to a pension by means of totalization, a quarter of coverage under United States laws on or after January 1, 1952 and after the attainment of age 18, shall be counted as three months of residence in Canada.]~~

~~[(c) The agency of Canada shall calculate the amount of the pro-rated pension at the rate of 1/40th of the full pension for each year of residence in Canada which is recognized as such in subparagraph (3)(a) of this Article or deemed as such under Article VI of this Agreement.]~~

~~[(4) If the total duration of the periods of residence completed in Canada in accordance with subparagraph (3)(a) of this Article or Article VI of this Agreement is less than one year, the agency of Canada shall not pay a pension in respect of those periods.]~~

(1) (a) If a person is not entitled to the payment of a benefit because he or she has not accumulated sufficient periods of residence under the Old Age Security Act, or periods of coverage under the Canada Pension Plan, the entitlement of that person to the payment of that benefit shall, subject to sub-paragraph (1)(b), be determined by totalizing these periods and those specified in paragraph (2), provided that the periods do not overlap.

(b) In the application of sub-paragraph (1)(a) of this Article to the Old Age Security Act:

(i) only periods of residence in Canada completed on or after January 1, 1952, including periods deemed as such under Article VI of this Agreement, shall be taken into account; and

(ii) if the total duration of those periods of residence is less than one year and if, taking into account only those periods, no right to a benefit exists under that Act, the agency of Canada shall not be required to pay a benefit in respect of those periods by virtue of this Agreement.

(2) (a) For purposes of determining entitlement to the payment of a benefit under the Old Age Security Act, a quarter of coverage credited under United States laws on or after January 1, 1952 and after the age at which periods of residence in Canada are credited for purposes of that Act shall be considered as three months of residence in the territory of Canada.

(b) For purposes of determining entitlement to the payment of a benefit under the Canada Pension Plan, a calendar year including at least one quarter of coverage credited under United States laws shall be considered as a year of coverage credited under the Canada Pension Plan.

ARTICLE IX

~~[(1) In this Article, "spouse's allowance" means a partial spouse's allowance under Part II.1 of the Old Age Security Act.]~~

~~[(2) If a person is not entitled to a spouse's allowance under the Act because of insufficient periods of residence, entitlement to a spouse's allowance may be determined by totalizing periods of residence in accordance with subparagraph (3) (a) of Article VIII and periods of coverage under United States laws in accordance with subparagraph (3) (b) of Article VIII, but where the periods coincide, only one period shall be counted.]~~

(1) If a person is entitled to the payment of an Old Age Security pension or a spouse's allowance solely through the application of the totalizing provisions of

Article VIII, the agency of Canada shall calculate the amount of the pension or spouse's allowance payable to that person in conformity with the provisions of the Old Age Security Act governing the payment of a partial pension or a spouse's allowance, exclusively on the basis of the periods of residence in Canada on or after January 1, 1952 which may be considered under that Act or are deemed as such under Article VI of this Agreement.

- (2) Paragraph (1) shall also apply to a person outside Canada who would be entitled to the payment of a full pension in Canada but who has not resided in Canada for the minimum period required by the Old Age Security Act for entitlement to the payment of a pension outside Canada.
- (3) Notwithstanding any other provision of this Agreement:

 - (a) an Old Age Security pension shall be paid to a person who is outside Canada only if that person's periods of residence, totalized as provided in Article VIII, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for entitlement to the payment of a pension outside Canada; and
 - (b) a spouse's allowance and a guaranteed income supplement shall be paid to a person who is outside of Canada only to the extent permitted by the Old Age Security Act.

ARTICLE X

~~[Article IV of this Agreement does not affect the provisions of the Old Age Security Act governing the payment of the guaranteed income supplement and the spouse's allowance to persons not resident in Canada.]~~

If a person is entitled to the payment of a benefit under the Canada Pension Plan solely through the application of the totalizing provisions of Article VIII, the agency of Canada shall calculate the amount of benefit payable to that person in the following manner:

- (a) the earnings-related portion of the benefit shall be determined in conformity with the provisions of the Canada Pension Plan, exclusively on the basis of the pensionable earnings under that Plan; and
- (b) the flat-rate portion of the benefit shall be determined by multiplying:
 - (i) the amount of the flat-rate portion of the benefit determined in conformity with the provisions of the Canada Pension Plan

by
 - (ii) the fraction which represents the ratio of the periods of coverage under the Canada Pension Plan in relation to the minimum qualifying period required under that Plan to establish entitlement to that benefit, but in no case shall that fraction exceed the value of one.

~~{ARTICLE XI}~~

~~[(1) In this Article, "benefit" means,~~

- ~~(a) an orphan's benefit or a disabled contributor's child's benefit,~~
- ~~(b) a death benefit,~~
- ~~(c) a disability pension, or~~
- ~~(d) a survivor's pension~~

~~payable under the Canada Pension Plan.]~~

~~[(2) If a person is not entitled to a benefit because of insufficient periods of coverage under the Canada Pension Plan, entitlement to the benefit may be determined by totalizing periods of coverage under the laws of both Contracting States in accordance with paragraph (3) of this Article, to the extent that they do not coincide.]~~

~~[(3) (a) Subject to the provisions governing the contributory period under the Canada Pension Plan, to establish entitlement to a benefit by means of totalization, a year in which at least one quarter of coverage is credited under United States laws shall be deemed to be a year in which contributions were made under the Canada Pension Plan.]~~

~~[(b) The agency of Canada shall calculate the earnings related portion of the benefit directly and exclusively on the basis of the periods of coverage completed under the Canada Pension Plan.]~~

~~[(c) The amount of the flat rate benefit under the Canada Pension Plan is the amount obtained by multiplying:~~

~~(i) the amount of the flat rate benefit determined under the provisions of the Canada Pension Plan;~~

~~by~~

~~(ii) the ratio that the periods of coverage under the Canada Pension Plan represent in relation to the total of the periods of coverage under the Canada Pension Plan and of only those periods of coverage under United States laws required to satisfy the minimum requirements for entitlement under the Canada Pension Plan.]~~

PART IV

MISCELLANEOUS PROVISIONS

ARTICLE XII

The Competent Authorities of the two Contracting States shall:

(a) Conclude an Administrative Arrangement and make such other arrangements as may be necessary for the application of this Agreement;

(b) To the extent permitted by the laws which they administer, and any other relevant national statutes, communicate to each other any information necessary for the application of this Agreement;

- (c) Communicate to each other information concerning the measures taken for the application of this Agreement; and
- (d) Communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

ARTICLE XIII

The Competent Authorities and agencies of the Contracting States, within the scope of their respective authorities, shall assist each other in implementing this Agreement. In accordance with arrangements to be agreed upon pursuant to Article XII(a), the Competent Authorities and agencies may also assist each other in administering the laws to which this Agreement applies.

ARTICLE XIV

- (1) Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or an agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the Competent Authority or an agency of the other Contracting State in accordance with its laws.
- (2) Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further

certification. The agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

ARTICLE XV

- (1) The Competent Authorities and agencies of the Contracting States may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the official language of either Contracting State.
- (2) No application or document may be rejected by a Competent Authority or an agency solely on the grounds that it is written in an official language of the other Contracting State.

ARTICLE XVI

- (1) A written application for benefits filed with an agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant: (a) requests that it be considered an application under the laws of the other Contracting State; or (b) in the absence of a request that it not be so considered, provides information at the time of application indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.
- (2) An application for benefits under the laws of one Contracting State which is filed with the agency of the other Contracting State in accordance with paragraph (1)

of this Article, shall be adjudicated by the agency of the first Contracting State under the applicable provisions of its laws.

- (3) An applicant may request that an application filed with an agency of one Contracting State be effective on a different date in the other Contracting State within the limitations of and in conformity with the laws of the other Contracting State.
- (4) The provisions of Part III of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force.

ARTICLE XVII

- (1) A written appeal of a determination made by the agency of one Contracting State may be validly filed with an agency of either Contracting State. The appeal shall be dealt with according to the appeal procedure of the laws of the Contracting State whose decision is being appealed.
- (2) Any claim, notice or written appeal which, under the laws of one Contracting State, must have been filed within a prescribed period with the agency of that Contracting State, but which is instead filed within the same prescribed period with the agency of the other Contracting State, shall be considered to be filed on time and shall be forthwith transmitted to the agency of the first Contracting State.

ARTICLE XVIII

Unless disclosure is required under the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement to that Contracting State by the other Contracting State is confidential and shall be used exclusively for the purposes of implementing this Agreement. Such information received by a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

PART V

TRANSITIONAL AND FINAL PROVISIONS

ARTICLE XIX

- (1) No provision of this Agreement shall confer any right
 - (a) to receive a pension, allowance or benefit for a period before the date of the entry into force of the Agreement, or
 - (b) to receive a lump-sum death benefit if the person died before the entry into force of the Agreement.
- (2) In the implementation of this Agreement, consideration shall also be given to periods of coverage and other events relevant to rights under the laws occurring before the entry into force of this Agreement, except that neither Contracting State shall take into account periods of coverage occurring prior to the effective date of its laws.

- (3) Determinations made before the entry into force of this Agreement shall not affect rights arising under it.
- (4) This Agreement shall not result in the reduction of benefit amounts because of its entry into force.
- (5) The period of work referred to in the last sentence of Article V(2)(a) shall be measured beginning on or after the date on which this Agreement enters into force.

ARTICLE XX

The Competent Authority of the United States and the authorities of the provinces of Canada may conclude understandings concerning any social security legislation within the provincial jurisdiction insofar as those understandings are not inconsistent with the provisions of this Agreement.

ARTICLE XXI

- (1) This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States to the other Contracting State.
- (2) If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.

ARTICLE XXII

This Agreement shall enter into force on the first day of the second month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Ottawa this 11th day of March 1981, in the English and French languages, each version being equally authentic.

Alexander M. Haig, Jr.
For the Government of the
United States of America

Mark MacGuigan
Monique Begin
For the Government of Canada

